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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1993

Addendum

MONACO

[14 March 1994]

CONTENTS

Paragraphs Page

GE.94-12780 (E)

1. The Constitution of 17 December 1962 solemnly affirms its commitment to the values upheld by the Convention and declares in particular:

> Article 2, paragraph 2: "The Principality is a State ruled by law and devoted to respect for fundamental liberties and rights";
>
> Article 19, paragraph 1: "Individual freedom and security are guaranteed. No one may be prosecuted except in cases provided for by law, before legally appointed judges and in the manner prescribed by law";
>
> Article 20, paragraph 1: "No penalty may be introduced or applied except by law";
>
> Article 20, paragraph 2: "Criminal law must ensure respect for human personality and dignity. No one may be subjected to cruel, inhuman or degrading treatment".

These fundamental principles are implemented in the Monegasque Penal Code and Code of Penal Procedure.

2. In accordance with the terms of the Convention (arts. 1 and 16), criminal legislation prohibits any "public official or other person acting in an official capacity" from engaging in acts of torture, i.e. acts whereby "severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him ... information or a confession, punishing him for an act he ... has committed or is suspected of having committed, or intimidating or coercing him ..., or for any reason based on discrimination of any kind", or from engaging in "other acts of cruel, inhuman or degrading treatment or punishment".

3. Book III, Chapter II, of the Penal Code, entitled "Infringements of freedom", contains the following provisions:

(a) Article 72 prescribes civic dishonour for any public official or government agent who has ordered or committed any arbitrary act that constitutes an infringement of either individual freedom or of the laws and institutions of the Principality;

(b) Article 74 punishes by civic dishonour any public official responsible for the administrative or judicial police who refuses to register or neglects to act on a lawful complaint reporting any arbitrary detention and who is unable to justify his failure to report it to higher authority.

4. Chapter III, paragraph V, of the Penal Code, entitled "Abuse of authority", contains the following provisions:

(a) Article 123 lays down a prison sentence for any administrative or judicial official, judicial or police officer, or officer or agent of the forces of law and order guilty of unlawful entry into the home;

(b) Articles 126 and 137 lay down severer penalties for crimes or offences committed by a civil servant, public official, officer responsible

for enforcing judicial warrants or decisions, commander in chief or officer of lower rank in the forces of law and order who, in the course of his duties or in connection with them, commits or orders violence to be committed against individuals; the crimes and offences against individuals that may degenerate into acts of torture or constitute cruel treatment are the following: homicide, murder, poisoning, death threats or threats of physical violence, the various forms of deliberately striking and wounding (depending on whether they lead to an individual being incapacitated from work, mutilation, amputation, blindness, a serious permanent handicap or death), breaches of morals, unlawful arrest and abduction, which may be associated with threats of death or torture.

5. In addition to the perpetrators of these crimes, any persons who by gift, promise, threat or abuse of authority or power cause such acts to be committed or issue instructions for their committal, persons who have obtained the instruments used to commit them, and persons who have aided or abetted the perpetrators in preparing or carrying out their act are also liable to punishment for complicity (Penal Code, arts. 41 and 42).

6. Monegasque penal procedure establishes strict respect for fundamental rights and freedoms, and more specifically for the rights of the defence. Should a public official be accused of having committed the crimes and offences described above, they are immediately investigated, as appropriate pursuant to a complaint by and at the initiative of any person who considers himself a victim thereof, prosecuted in accordance with the law and tried by the ordinary courts (criminal court, correctional court), with a constant concern to ensure impartiality and verify the reliability of the evidence. The penalties handed down (basically imprisonment and a fine) exclude physical punishment and any cruel, inhuman or degrading treatment.

7. Article 14 of the Convention requires any State party to ensure that the victim of an act of torture obtains redress and has an enforceable right to fair compensation. The Monegasque legal system provides for such compensation through a claim for damages against the perpetrator of the offence.

8. Article 8 of the Convention deals with extradition and stipulates that offences connected with torture are deemed to be included as extraditable offences in any extradition treaty existing between States parties or, in the absence of a treaty, recognized as extraditable offences. These provisions are identical to those contained in the Geneva Protocol of 25 March 1972 amending the Single Convention on Narcotic Drugs of 30 March 1961, to which Monaco has acceded.

9. To conclude, current Monegasque legislation is manifestly inspired by the same ideals regarding the dignity of the human person and universal and effective respect for human rights and fundamental freedoms as those set out in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

10. The implementation of these precepts poses no particular difficulties in the Principality.